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06 UNITED STATES DISTRICT COURT
07 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

08 RAQUEL AIYANA CALDWELL,)
09 Plaintiff,) CASE NO. C13-1189-JLR-MAT
10 v.)
11 CAROLYN W. COLVIN, Acting) REPORT AND RECOMMENDATION
Commissioner of Social Security,) RE: SOCIAL SECURITY DISABILITY
12 Defendant.) APPEAL
13 _____)

14 Plaintiff Raquel Aiyana Caldwell proceeds through counsel in her appeal of a final
15 decision of the Commissioner of the Social Security Administration (Commissioner). The
16 Commissioner denied plaintiff's applications for Disability Insurance Benefits (DIB) and
17 Supplemental Security Income (SSI) after a hearing before an Administrative Law Judge
18 (ALJ). Having considered the ALJ's decision, the administrative record (AR), and all
19 memoranda of record, the Court recommends that this matter be REMANDED for an award of
20 benefits.

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01 **FACTS AND PROCEDURAL HISTORY**

02 Plaintiff was born on XXXX, 1976.¹ She has a high school education and two years of
03 vocational school. (AR 48, 166.) She has past relevant work as a court clerk and
04 receptionist.

05 Plaintiff filed applications for DIB and SSI on April 12, 2010, alleging disability
06 beginning April 1, 1999. She is insured for DIB through December 31, 2004. (AR 22, 39.)
07 Plaintiff's applications were denied at the initial level and on reconsideration. Plaintiff timely
08 requested a hearing.

09 On October 27, 2011, ALJ Glen G. Meyers held a hearing, taking testimony from
10 plaintiff and a vocational expert. (AR 44-79.) On December 6, 2011, the ALJ issued a
11 decision finding plaintiff not disabled from April 1, 1999 through the present. (AR 28-39.)

12 Plaintiff timely appealed. The Appeals Council denied plaintiff's request for review
13 on May 21, 2013 (AR 1-5), making the ALJ's decision the final decision of the Commissioner.
14 Plaintiff appealed this final decision of the Commissioner to this Court.

15 **JURISDICTION**

16 The Court has jurisdiction to review the ALJ's decision pursuant to 42 U.S.C. § 405(g).

17 **DISCUSSION**

18 The Commissioner follows a five-step sequential evaluation process for determining
19 whether a claimant is disabled. *See* 20 C.F.R. §§ 404.1520, 416.920 (2000). At step one, it
20 must be determined whether the claimant is gainfully employed. The ALJ found plaintiff had

21 ¹ Plaintiff's date of birth is redacted back to the year of birth in accordance with Federal Rule of
22 Civil Procedure 5.2(a) and the General Order of the Court regarding Public Access to Electronic Case
Files, pursuant to the official policy on privacy adopted by the Judicial Conference of the United States.

01 not engaged in substantial gainful activity since the alleged onset date. At step two, it must be
02 determined whether a claimant suffers from a severe impairment. The ALJ found plaintiff's
03 affective disorder and psychotic disorder severe. Step three asks whether a claimant's
04 impairments meet or equal a listed impairment. The ALJ found that plaintiff's impairments
05 did not meet or equal the criteria of a listed impairment. If a claimant's impairments do not
06 meet or equal a listing, the Commissioner must assess residual functional capacity (RFC) and
07 determine at step four whether the claimant has demonstrated an inability to perform past
08 relevant work. The ALJ found plaintiff able to perform a full range of work at all exertional
09 levels but with nonexertional limitations. Plaintiff could perform simple, repetitive tasks with
10 no contact with the public and occasional contact with supervisors and co-workers. She would
11 have unscheduled absences from work averaging one time every two months and would be off
12 task at work an average of ten percent of the time. With that assessment, the ALJ found
13 plaintiff unable to perform her past relevant work.

14 If a claimant demonstrates an inability to perform past relevant work, the burden shifts
15 to the Commissioner to demonstrate at step five that the claimant retains the capacity to make
16 an adjustment to work that exists in significant levels in the national economy. With the
17 assistance of a vocational expert, the ALJ found plaintiff capable of performing other jobs, such
18 as small products assembler and electrical accessories assembler.

19 This Court's review of the ALJ's decision is limited to whether the decision is in
20 accordance with the law and the findings supported by substantial evidence in the record as a
21 whole. *See Penny v. Sullivan*, 2 F.3d 953, 956 (9th Cir. 1993). Substantial evidence means
22 more than a scintilla, but less than a preponderance; it means such relevant evidence as a

01 reasonable mind might accept as adequate to support a conclusion. *Magallanes v. Bowen*, 881
02 F.2d 747, 750 (9th Cir. 1989). If there is more than one rational interpretation, one of which
03 supports the ALJ's decision, the Court must uphold that decision. *Thomas v. Barnhart*, 278
04 F.3d 947, 954 (9th Cir. 2002).

05 Plaintiff argues that the ALJ failed to properly evaluate the credibility of her testimony
06 and erroneously evaluated the medical opinion evidence. If the evidence had been properly
07 evaluated, plaintiff argues, the ALJ should have found that she met the criteria for § 12.04, *see*
08 20 C.F.R. Pt. 404, Subpt. P, App. 1, § 12.04, "Affective Disorders", or, in the alternative,
09 should have found her disabled at step five. She requests remand for an award of benefits or,
10 alternatively, for further administrative proceedings. The Commissioner argues that the ALJ's
11 decision is supported by substantial evidence and should be affirmed.

12 Credibility Evaluation

13 In assessing credibility, an ALJ must first determine whether a claimant presents
14 "objective medical evidence of an underlying impairment 'which could reasonably be expected
15 to produce the pain or other symptoms alleged.'" *Lingenfelter v. Astrue*, 504 F.3d 1028, 1036
16 (9th Cir. 2007) (quoting *Bunnell v. Sullivan*, 947 F.2d 341, 344 (9th Cir. 1991)). Given
17 presentation of such evidence, and absent evidence of malingering, an ALJ must provide clear
18 and convincing reasons to reject a claimant's testimony. *Id.*

19 In finding a social security claimant's testimony unreliable, an ALJ must render a
20 credibility determination with sufficiently specific findings, supported by substantial evidence.
21 "General findings are insufficient; rather, the ALJ must identify what testimony is not credible
22 and what evidence undermines the claimant's complaints." *Lester v. Chater*, 81 F.3d 821, 834

01 (9th Cir. 1996). “In weighing a claimant’s credibility, the ALJ may consider his reputation for
02 truthfulness, inconsistencies either in his testimony or between his testimony and his conduct,
03 his daily activities, his work record, and testimony from physicians and third parties concerning
04 the nature, severity, and effect of the symptoms of which he complains.” *Light v. Social Sec.*
05 *Admin.*, 119 F.3d 789, 792 (9th Cir. 1997).

06 The uncontradicted record establishes plaintiff suffered an apparent psychotic break in
07 March 1999 and was admitted to the Psych Ward at Valley Medical Center. (AR 245-46.)
08 Initially, she discharged herself against medical advice, but returned two days later with
09 increasing depression and suicidal thoughts, as well as auditory and visual hallucinations. (AR
10 249.) Plaintiff had a family history of mental illness, including schizophrenia and bipolar
11 disorder, but no previous psychiatric hospitalization. (*Id.*) For the next ten years, plaintiff
12 lived with her father, spending the time “pretty much sitting in her room and doing nothing.”
13 (AR 312.) According to her mother ““she didn’t bathe, didn’t eat and there were bags of
14 garbage in her room.”” (AR 312, 502.) She continued to experience auditory hallucinations,
15 but refused treatment until 2009 when she began treatment at HealthPoint Center. (AR
16 317-75.)

17 At hearing, plaintiff testified she continues to have auditory hallucinations, starting
18 when she wakes up and lasting for a few hours on and off all day long. The voices are
19 distracting, and she tries to watch TV or turn on the radio in order to not concentrate on the
20 voices. Some days are worse than others. (AR 51-55.) The auditory hallucinations cause
21 depression and mental and physical fatigue, and she naps for several hours. (AR 66-67, 69.)

22 The ALJ found that plaintiff’s impairments “could reasonably be expected to cause

01 some ... [but not] all” of the symptoms which she alleged, because her “wide range of activities
02 suggests that her limitations are not as significant as alleged” and “[t]he objective findings in
03 the treatment notes do not support the alleged severity of her limitations.” (AR 33-34.) The
04 Court agrees with plaintiff that these reasons are not clear and convincing.

05 A. Daily Activities

06 There is no dispute as to the extent of plaintiff’s daily activities. She has little or no
07 contact with anyone outside her family. She watches television and listens to the radio. She
08 does the dishes. She plays with her puppy. She last read a book about a year ago. She
09 occasionally takes walks outside. She goes to the store with her mother while her mother
10 shops for makeup. (AR 57-61.)

11 Reviewing these activities, the ALJ found plaintiff’s “wide range of activities suggests
12 that her limitations are not as significant as alleged.” (AR 33.) The ALJ provides no
13 explanation for this conclusory statement, and does not indicate which portion of plaintiff’s
14 testimony about her impairments is not credible. Nor does the Court find any inherent
15 contradiction between plaintiff’s explanation of the distracting and fatiguing nature of her
16 auditory hallucinations and depression and her very limited daily activities. This basis for the
17 ALJ’s evaluation of plaintiff’s credibility lacks the support of substantial evidence.

18 B. Objective Medical Evidence Support

19 “[O]nce the claimant produces objective medical evidence of an underlying
20 impairment, an adjudicator may not reject a claimant’s subjective complaints based solely on a
21 lack of objective medical evidence to fully corroborate the alleged severity of pain.” *Bunnell*,
22 947 F.2d at 343. Here, without other valid reasons for discounting plaintiff’s credibility, the

01 ALJ's reliance on a lack of objective medical evidence support for plaintiff's subjective
02 testimony is no longer legally sufficient.

03 Furthermore, the ALJ's finding that "the objective findings in the treatment notes"
04 contradict plaintiff's testimony does not stand up to scrutiny. (AR 35.) The ALJ's
05 conclusion that a lack of treatment between 1999 and 2009 "suggests improvement in her
06 symptoms" has no factual basis in the record, and is directly contradicted by the only evidence
07 on point—the testimony of plaintiff and her mother. (AR 34.) *See, e.g., Regennitter v.*
08 *Comm'r Soc. Sec. Admin.*, 166 F.3d 1294, 1299-1300 (9th Cir. 1999) ("[W]e have particularly
09 criticized the use of a lack of treatment to reject mental complaints both because mental illness
10 is notoriously underreported and because 'it is a questionable practice to chastise one with a
11 mental impairment for the exercise of poor judgment in seeking rehabilitation.'") (quoting
12 *Nguyen v. Chater*, 100 F.3d 1462, 1465 (9th Cir. 1996)). The fact that plaintiff's symptoms
13 improved on a relative basis once she began treatment and a medication regime in no way
14 contradicts plaintiff's testimony about the impact of her auditory hallucinations on her energy,
15 focus, and concentration. To find a claimant not credible, the ALJ must "point to specific facts
16 in the record" that demonstrate the claimant is less disabled than she claims. *Vasquez v.*
17 *Astrue*, 572 F.3d 586, 592 (9th Cir. 2009). The Court agrees with plaintiff that the ALJ's
18 findings do not satisfy that requirement.

19 Medical Evidence

20 In large part, the ALJ's finding that plaintiff's subjective testimony was unsupported by
21 the objective medical evidence is based on a rejection of most of the medical opinion evidence
22 as overly reliant on plaintiff's subjective reports of her symptoms and limitations. As a result,

01 the lack of substantial evidence support for the ALJ's credibility assessment also undermines
02 the legal sufficiency of the ALJ's evaluation of the medical opinion evidence.

03 For example, Larry McCann, the licensed social worker who treated plaintiff at
04 Harborview Mental Health Clinic, opined that plaintiff "had multiple moderate, marked, and
05 severe functional limitations." (AR 35.) The ALJ gave his opinion "little weight" because he
06 "was largely relying on the claimant's subjective report of her symptoms and not the objective
07 evidence." (*Id.*) Consulting psychiatrist Dr. Romalee A. Davis opined that plaintiff was not
08 capable of living on her own and paying rent, and was not expected to get much better. (*Id.*)
09 The ALJ gave the opinion little weight "as it is not consistent with the objective findings of the
10 examination and reported activities." (*Id.*) Evaluating psychiatrist Dr. Winslow likewise
11 assessed plaintiff with "multiple moderate and marked functional limitations." (AR 36.) His
12 opinion was rejected as "it appears he is largely relying upon subjective report of her
13 symptoms." (*Id.*) Treating mental health counselor Letealia Reid-Scott opined plaintiff was
14 markedly limited in the ability to complete a normal workday and workweek without
15 interruptions from psychologically based symptoms or to perform at a consistent pace without
16 an unreasonable number and length of rest periods. (*Id.*) Her opinion was given little weight
17 because "it appears to be largely based upon the claimant's subjective report of her symptoms
18 and limitations." (*Id.*) The ALJ rejected the opinion of examining psychologist Dr. Robert
19 Parker that plaintiff "had multiple moderate, marked, and severe functional limitations"
20 because plaintiff "had recently just been prescribed psychotropic medication and the evidence
21 supports improvement of her symptoms with ongoing treatment." (AR 34.)

22 The only medical opinion evidence characterized by the ALJ as consistent with the

01 objective medical evidence and plaintiff's "wide" range of activities was that of non-examining
02 medical consultant Gary L. Nelson Ph.D, reviewed and affirmed by R. Renee Eisenhauer,
03 Ph.D., that plaintiff could carry out simple instructions and meet productivity requirements "the
04 vast majority of the time", although low-level auditory hallucinations "might interfere at times
05 with the claimant's prolonged concentration and pace consistency." (AR 37.) This vague
06 opinion does not provide legally sufficient support for the ALJ's RFC assessment. "The
07 opinion of a nonexamining physician cannot by itself constitute substantial evidence that
08 justifies the rejection of the opinion of either an examining physician or a treating physician."
09 *Lester*, 81 F.3d at 831 (citing *Pitzer v. Sullivan*, 908 F.2d 502, 506 n.4 (9th Cir. 1990)
10 (concluding that the nonexamining doctor's opinion "with nothing more" did not constitute
11 substantial evidence).) Nor did the ALJ explain the basis of the finding that plaintiff would be
12 able to remain on task ninety percent of the time and would only miss work once every two
13 months. (AR 32.) "We require the ALJ to build an accurate and logical bridge from the
14 evidence to her conclusions so that we may afford the claimant meaningful review of the SSA's
15 ultimate findings." *Blakes v. Barnhart*, 331 F.3d 565, 569 (7th Cir. 2003). The ALJ's
16 decision in this case does not allow for such meaningful review.

17 Remedy

18 If the Court finds the ALJ failed to properly justify the rejection of a claimant's
19 subjective testimony and if there are no other issues that must be resolved before a proper
20 disability determination can be made, the Court may credit the testimony as true. *Varney v.*
21 *Sec'y*, 859 F.2d 1396, 1398-99 (9th Cir. 1988). This case poses an appropriate situation for
22 crediting the plaintiff's testimony as true. None of the reasons given by the ALJ for finding the

01 plaintiff not credible stand up under scrutiny, nor does the Court find a contrary conclusion
02 justified by the record evidence.

03 The Court also has discretion to remand for further proceedings or to award benefits.
04 *See Marcia v. Sullivan*, 900 F.2d 172, 176 (9th Cir. 1990). The Court may direct an award of
05 benefits where “the record has been fully developed and further administrative proceedings
06 would serve no useful purpose.” *McCartey v. Massanari*, 298 F.3d 1072, 1076 (9th Cir.
07 2002).

08 Such a circumstance arises when: (1) the ALJ has failed to provide legally
09 sufficient reasons for rejecting the claimant’s evidence; (2) there are no
10 outstanding issues that must be resolved before a determination of disability can
11 be made; and (3) it is clear from the record that the ALJ would be required to
12 find the claimant disabled if he considered the claimant’s evidence.

11 *Id.* at 1076-77.

12 The Court finds this case appropriate for an award of benefits. The ALJ found plaintiff
13 disabled through step four of the sequential evaluation, resulting in a shifting of the burden of
14 proof to the Commissioner at step five to show plaintiff is not disabled. As previously
15 described, the RFC upon which the vocational expert based her identification of appropriate
16 jobs in the national economy lacked the support of substantial evidence, which undermines the
17 ALJ’s step five finding. This is not a case where enhancement of the record would be useful.
18 *Harman v. Apfel*, 211 F.3d 1172, 1178 (9th Cir. 2000). Rather, remanding for further
19 administrative proceedings would serve no useful purpose and would unnecessarily extend the
20 proceedings. There being no outstanding issues that must be resolved, plaintiff must be found
21 disabled.

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01 **CONCLUSION**

02 For the reasons set forth above, this matter should be REMANDED for an award of
03 benefits.

04 DATED this 13th day of January, 2014.

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07 Mary Alice Theiler
08 Chief United States Magistrate Judge
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